SANFORD J. LEWIS, ATTORNEY

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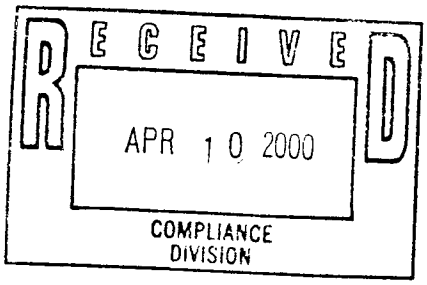
April 10, 2000



Mr. Daniel P. Ducore, Assistant Director
Bureau of Competition
Federal Trade Commision
601 Pennsylvania Avenue, N.W.
Washington, DC 20580

By Fax (202) 326-2655

FTC File No. 991-0077; Docket No. C-3907;
via Fax 202 326-3396

RE: Valero Acquisition of Exxon California Assets

Dear Mr. Ducore,

I am writing on behalf of citizens in Benicia, California, organized in an association known as the Good Neighbor Steering Committee, Benicia. These citizens are concerned with and will be affected by the community and environmental impacts of the divestiture of Exxon assets including the Benicia refinery to Valero, Inc.

When the merger settlement was originally announced in November 1999 and before Valero was chosen as the proposed acquirer, the Good Neighbor Steering Committee began to circulate a petition among local residents requesting a good neighbor agreement to ensure that environmental and community issues related to the divestiture would be addressed. As of this date, approximately 225 residents have endorsed this petition regarding the need for such community safeguards prior to any sale of the refinery.

Under separate cover I have sent you an initial set of exhibits to these comments. Please attach those exhibits to the enclosed comments.

Sincerely,

Sanford Lewis

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UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

Comments of Benicia Good Neighbor Steering Committee Regarding the FTC's Proposed Approval of Divestment of Exxon Benicia Refinery to Valero, Inc.

I. THE PROPOSED ACQUISITION BY VALERO DOES NOT MEET THE CRITERIA PROPOSED BY THE FTC FOR AN ACQUIRER OF EXXON'S BENICIA FACILITY.

The Federal Trade Commission has required the Exxon Corporation to divest certain of its facilities as part of a proposed settlement of charges that Exxon's acquisition of Mobil Corporation would violate federal antitrust laws. The FTC had alleged in a complaint that the acquisition would significantly injure competition in the markets for refining and marketing of gasoline in the United States and allow Exxon Mobil to raise gasoline prices for consumers. Accordingly, the proposed settlement would prevent merger of much of the companies' overlapping U.S. marketing businesses. It would require the divestiture (sale or assignment) of certain Exxon and Mobil gas stations and among other things, Exxon's refinery in Benicia, California.

The settlement itself states that the "Commission will consider, inter alia, **whether the acquirer has the business experience, technical judgment and available capital to continue to invest in the refinery in order to maintain CARB gasoline production even in the event of changing environmental regulation.**" It then allocates liability

for past environmental damage at the facility.[1] The Commission's press release announcing the Exxon Mobil merger settlement noted that the decision whether to approve the proposed acquirers of the divested assets will be made after careful consideration of the refining and marketing experience, financial viability, business plans and environmental records of the acquiring companies.

In these comments we compile the evidence to support our opinion and position that the Valero corporation does not have the proper environmental record, business experience, technical judgment and available capital to manage the Exxon Benicia refinery so as to comply with existing rules and to stay on top of changes that may emerge.

A. Valero's Corpus Christi refinery environmental performance is worse than refining industry averages on key measures.

Our review of Valero's record and business activities indicates that during recent

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[1]It provides:

> Respondents shall offer the acquirer of the Exxon California Refining and Marketing Assets an indemnity, subject to the prior approval of the Commission and to be effective upon the Effective Date of Divestiture of the Exxon California Refining and Marketing Assets, which indemnity shall allocate among Respondents and the acquirer, on such terms as the Respondents and the acquirer agree, responsibility with respect to potential claims and liabilities arising out of failure to comply with local, state, and federal environmental obligations in connection with the Benicia refinery and the Retail Sites that are divested or assigned pursuant to this Paragraph.

growth, the company has not even been able to ensure compliance at its existing operations. Viewing the Corpus Christi refinery in the light of the EPA's Sector Facility Index, the best available framework for comparing refineries, it is apparent that the company performs on key indicators significantly worse than the industry average. At the time the index was prepared - mid-1999 - Valero was found in current significant noncompliance with clean air laws (in the bottom 45 % of refineries), and in current significant noncompliance with water laws (in the bottom 7% of refineries), and had far more spills than the industry average. The figures for air and water "current" noncompliance appear to be reported by EPA as of June and March 1999 respectively.

Valero has been cited as one of the worst violators of Texas clean air laws, and has been targeted by the EPA due to extensive releases of hazardous materials. A company which has proven unable to control releases of hazardous materials at its existing facility of somewhat less complexity than the one proposed for acquisition does not seem a suitable acquirer. Other experienced refiners have better environmental records than Valero's.

B. Valero's Corpus Christi refinery is smaller and less complex than the Exxon- Benicia refinery.

One reason for the number of releases at its Corpus Christi operation may be the complexity of the refinery. The more complex a refinery is, the more sophisticated the management of that refinery must be. In the absence of management that is on par with

a complex facility, accidents such as those occurring at Corpus Christi can result.

The Benicia refinery is even more complex than the Corpus Christi operation. The notion of "complexity" in refineries represents the amount of processing a barrel of crude receives in a refinery and is determined in the sector by use of the Nelson Complexity Index.[2] The complexity of a simple refinery, a topping plant or asphalt plant is around three or lower. A typical, multi-product refinery will have a complexity of around 8 to 12 (the norm), and a very complex, multi-product, heavy crude, high sulfur refinery could have a complexity of over 16 (rare). According to Valero CEO Bill Greehey the Exxon Benicia refinery rates 14.9 in complexity on the Nelson Complexity Index, versus 14.2 for Corpus Christi.[3]

This notion of complexity demonstrates that Valero's management of the Corpus Christi operation is relevant to how it can be expected to manage the slightly more complex Benicia operation. Valero has performed poorly within the sector at Corpus

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[2] As one author has explained this: Complexity is defined as a measure of the relative construction costs of the refinery processes as they relate to the atmospheric crude distillation unit. The refinery's complexity indicates ***the amount of processing a barrel of crude oil receives during its flow through a refinery*** and is measured based on research completed by Dr. Wilbur L. Nelson. The late Dr. Nelson was the technical editor for the Oil and Gas Journal and professor at the University of Tulsa. Michael J. Remsha, P.E., ASA, *The U.S. Refining Industry: The Last Half of the Decade of the 1990s*. For this article and additional discussion of refinery complexity see http://www.american-appraisal.com/articles/remsha1.html

[3] Investor Conference Call, March 2000, http://play.rbn.com/?vdat/vdat/demand/livearchive/vdat000303b.ra, approximately 7 minutes into the broadcast.

Christi; we can find no reason to think it will do better in California than it has done in Texas.

Indeed there is every reason to think Valero will do worse in managing the challenges of Benicia. When comparing the Exxon and Valero Corpus Christi refineries, there is one critical difference to bear in mind. The Corpus Christi refinery is a small complex refinery (29,900 barrel per day) compared to the enormous complex refinery in Benicia (128,000 barrels per day.) Measured by barrels of crude processed per day the Corpus Christi refinery is only 23% of the size of the one that Valero wants to own in Benicia, but for the period examined it apparently has had more spills, more water pollution violations, and more air pollution violations than the Benicia refinery.

C. Valero may be stretched too thin financially by other acquisitions.

What makes the Valero acquisition particularly problematic is that the company has already stretched its capital resources with recent acquisitions. The acquisition of Valero would drive the company's debt-to-asset ratio to near 50%. The company's commitment to bringing that ratio back down to 42% within a year provides additional reason for concerns that Valero is not prepared to expend unanticipated resources that may be needed to ensure environmental compliance at Benicia.

II. VALERO HAS A POOR ENVIRONMENTAL RECORD AT ITS TEXAS FACILITIES.

A. Valero's refineries in Texas have been poor performers on key environmental measures of compliance and releases,

Valero points to environmental awards and voluntary efforts in Texas to argue that it is an environmentally sound company, even an environmental leader. Despite some good environmental projects and efforts, however, the company's record in Texas is poor. The Texas City refinery (purchased May 1997) was out of compliance with the Clean Air Act every quarter for eight quarters analyzed by the Environmental Working Group from 1997 to 1998. Exhibit 3 page 1. The Corpus Christi refinery - a longer held asset -- has had so many accidental releases of hazardous materials that in November 1999 it was targeted by EPA as one of only eleven facilities in Texas and Louisiana most in need of exerting greater control over their releases. Exhibit 1.

According to a former Texas Air Inspector, Neil Carman, Ph.D., Exhibit 8, Valero's Corpus Christi, Texas refinery has experienced numerous violations of state and federal air pollution laws and permit conditions in the period from 1994-1998 at least, and a significant number of these violations in the plant process units were partly attributable to a lack of adequate maintenance and proper operation so as to result in excess air emissions above state air pollution control permit limits. Furthermore, according to Carman, Valero failed to routinely operate and maintain its refinery in full and continuous compliance with all applicable rules and regulations, including its permit conditions, resulting in numerous violations of permit conditions and other laws. Records of excess emissions obtained from Valero's own reports, the Texas Natural

Resource and Conservation Commission's (TNRCC's) reports submitted from Valero, and the US EPA Region 6's reports from Valero and the TNRCC, confirm that Valero emitted large volumes of excess air emissions of Sulfur Dioxide (SO2), Hydrogen Sulfide gas (H2S), and Volatile Organic Compounds including benzene.

Pounds of Excess Pollution Reported by Valero, Corpus Christi, Texas 1994-1998	
SO2	8,624,000
H2S	19,600
VOC	168,000

According to Carman, "Valero Refining's Corpus Christi refinery has a long history of pollution problems and has kept the community complaining for years... Valero is one of the most cited refineries at Corpus Christi, TX for state air pollution violations. Local residents have repeatedly complained about air pollution problems from Valero for years despite the violations and some corrective actions being taken to solve their problems. Valero officials have repeatedly made promise after promise to fix the refinery's pollution problems but the fact is that citizens have continued to experience the same air pollution problems year after year after year. Valero's actions speak louder than its promises to the community and therefore local residents say that Valero can not be trusted to protect public health and obey the laws when their profits are more important. Among Valero's problems is Sulfur Dioxide (SO2) pollution above permit limits due to

repeated and continuing upsets in its process units. From 1994-98, Valero self-reported that it emitted 8.6 million pounds of excess SO2 which ranked it at the top and among the dirtiest Texas refineries for SO2 from upsets.....Citizens have persistently complained about Valero's SO2 pollution without much real progress to stop the upsets. Citizens complained for 10 years of catalyst dust levels adversely impacting their health, welfare and property, but there was no continuous compliance from Valero for over ten years."

B. Valero examined in comparison with other refineries appears significantly worse than an "average" refinery.

According to an EPA database (the Sector Facility Index, Exhibit 2) the Corpus Christi refinery had significant air and water pollution violations during the recent two year period covered by the online database. Five water pollutants were found over the limit; 11 reports showed pollutants exceeding the limits. The Corpus Christi refinery, the only refinery appearing in the EPA's Sector Facility index database as owned by Valero during the 1997-1998 time period, scores worse than the industry average in comparison with industrywide data as shown on the following pages.

Valero's Corpus Christi Plant Compared with Refining Industry Averages Reflected in the Sector Facility Index, USEPA Data is Based on January 1997 to December 1998 Except as Noted

Issue	Oil Refining Industry Average	Valero Corpus Christi Refinery	Exxon Benicia Refinery
Barrels of Crude Per Day	100,399	29,900	128,000
Number of Accidental Pollutant Spills/Releases*	**17.7**	**75**	**18**
Pounds of Pollutant Spillage*	**119, 497**	**182,406**	**51,000**
Current Noncompliance on Air Pollution	**45%**	**Current Noncompliance**	**Current Noncompliance**
Number of Quarters of Air Noncompliance over Two Years	2.3	3	1
Current Noncompliance on Water Pollution	**7%**	**Current Noncompliance**	**In Compliance**
Number of Water Pollutants Over Limit	3	5	5
Number of Quarters of Water Noncompliance	2.3	2	0
Number of Water Pollutant Reports over the limit	**6.9**	**11**	**7**

* This figure represents spillage only January 1997 through November 1998 due to database issue at EPA.

The EPA's Sector Facility Index from which this data derives is the best available information to compare Valero with other refineries. The EPA explains its SFIP program on its website as follows.[3]

> SFIP includes data for five industry sectors: petroleum refining; iron and steel production; primary smelting and refining of nonferrous metals; pulp manufacturing; and automobile assembly. Facilities from these sectors are included if they were in operation at any time during calendar year 1997. SFIP presents several categories of information. The inspection, compliance, and enforcement data focus on three important environmental statutes: the Clean Air Act, Clean Water Act, and Resource Conservation and Recovery Act (which regulates the disposal of solid and hazardous wastes). In most instances, EPA delegates administration of these laws to state and local governments, who in turn report their activities into national data systems. While EPA Regional Offices do enter some data directly, state governments and their local government partners are the source of most inspection, compliance and enforcement data presented by SFIP. When assessing the compliance status of individual facilities, government inspections and/or data reported directly by facilities are used by states and EPA to determine whether these facilities are in compliance with environmental laws. These determinations are then logged into federal databases (see summary below). In situations when government sanctions are necessary, EPA and state/local enforcement actions may be taken and penalties assessed. These enforcement activities and penalties are then entered into the databases. In addition to basic compliance and enforcement data, SFIP also provides information reported by facilities regarding the amount of chemicals released and transferred during plant operations, incidents in which chemical spills were reported, and overall facility production levels. SFIP also provides demographic information, such as the estimated number of people living nearby, and the education and income levels of the surrounding population. The information contained within SFIP is organized by industry sector so that users can view facility-level information in relation to other facilities that make similar products. Users cannot assume that all facilities within a sector are exactly the same -- they are not. However, the close similarities across facilities within each sector do allow some degree of comparison.

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[3]http://es.epa.gov/oeca/sfi

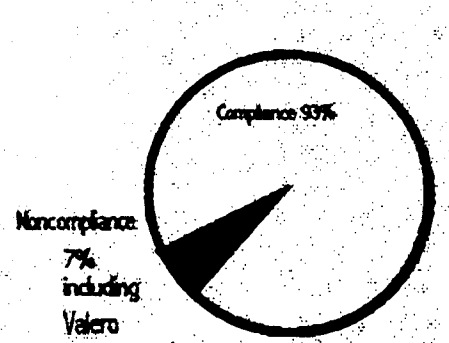
The EPA explained the pollutant spills database as follows:

> Pollutant Spills: On-site chemical or material spills within the past two years. Pollutant spill information is included in SFIP as an indicator of disruptions to normal operations. Spill information is available from the Emergency Response Notification System (ERNS) database, administered by a number of different federal agencies. SFIP Facility-level Statistics reports contain an indicator ("yes" or "no") that shows whether any on-site spills occurring in the last two years were identified for a given facility. An "ERNS Incident Report" is available for each facility with spills via the Data Access page of the SFIP Website. This report contains further details about each spill, such as: spill date, name of the material spilled, the Chemical Abstracts Service (CAS) Registry number for the substance released, the quantity of the substance released, the number of injuries resulting from releases as reported, and the number of fatalities resulting from releases as reported. The ERNS database is the product of a cooperative data sharing effort among the U.S. Coast Guard, EPA Headquarters, the Department of Transportation, EPA Regions, and the National Response Center. ERNS stores information on releases of oil and other hazardous substances. Initial spill reports may be updated with information from various federal, state and local response authorities. The data are used for emergency planning efforts and in developing spill prevention programs. To link ERNS records with SFIP facilities, all ERNS records for spills occuring during the past two years in the cities where SFIP facilities are located were reviewed. Spills were linked if there was a match between the address where the spill occurred and that of an SFIP facility. For this project, obvious duplicate and revised reports for the same events were eliminated by retaining only the "most-up-to-date" reports and by deleting spills reported for a particular facility with duplicate spill date and material spilled.

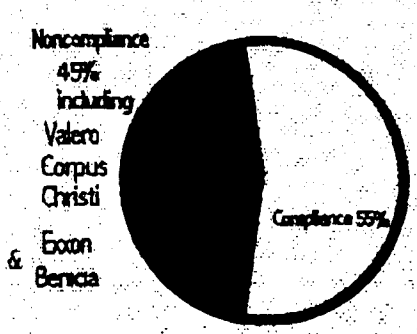
Note that since the EPA SFI database did not include a tally of Valero spills, but only provided a link to the ERNS data, we had to tally the number of spills ourselves. We used conservative assumptions – that more than one substance released on the same day was part of the same spill. Even when several substances were released on the same day, we counted this as one reported spill, even though in some instances these spills may have been at different times and locations on the same day.

Comparing Valero with Exxon and Industrywide Environmental Performance

According to USEPA Sector Facility Index for Refineries 1997-1998



Current Noncompliance on Water Pollution

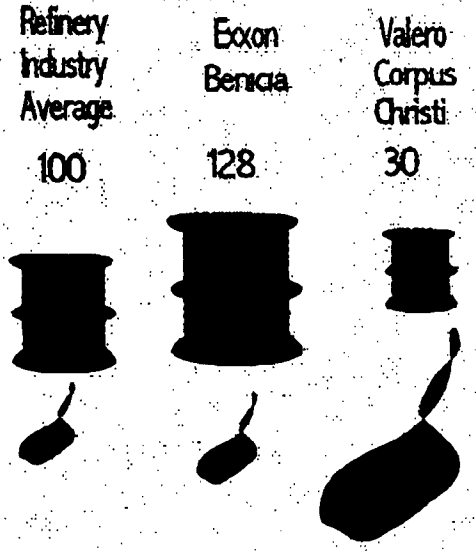


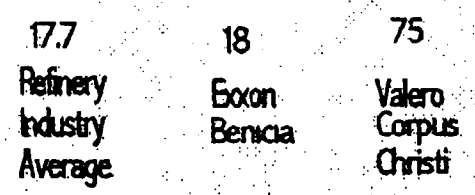
Current Noncompliance on Air Pollution

Volume of Activity

Thousands of

Barrels of Crude Per Day





Number of Accidental Releases

Valero Corpus Christi has proven a poor manager of accidental hydrogen sulfide and sulfur dioxide emissions - which are some of the worst health-damaging emissions. These emissions are known to pose some of the worst damage to human respiratory systems.

As one physician has written, hydrogen sulfide

> kills by combining with the iron in a crucial enzyme that lets our cells use oxygen. A large dose, one breath or two, stops our metabolic machine. We die, unable to use surrounding oxygen. Lesser doses kill the more susceptible cells in the brain, heart and kidney. Effects of small doses accumulate so that vital functions deteriorate insidiously. When the brain deteriorates, the ability to think, reason and remember decreases. Vision constricts from the sides, like looking down a tunnel. Balance fails in the dark. The speed of reaction slows. The poisoned people look normal but behave as if they were 80 or 90 years old. Hydrogen sulfide-exposed children have trouble recalling lessons and reciting, and they lose the ability to read. They eventually drop out of school. [4]

The Corpus Christi refinery is a 29,900 barrels of crude per day operation; the Exxon refinery is 4.3 four times the input at 128,000 barrels per day. The upshot of this analysis: if Valero performs environmentally as it did at its similarly complex but smaller refinery in Corpus Christi, it can be expected that environmental performance of the Benicia refinery would be severely degraded. A worst case scenario for Benicia to avoid: when Valero assumes the helm at a

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[4] Kaye H. Kilburn Md, a Professor of Medicine at University of Southern California, commentary published in LA Times, Monday, November 15, 1999. http://www.latimes.com/news/comment/19991115/t000104139.html

refinery more than four times as large and even more complex than its Corpus Christi refinery and operates consistent with its record at Corpus Christi, the Benicia operation could experience more than four times as many spills, water pollution violations and air pollution violations.

C. Valero operations also face serious worker health and safety issues.

Some specific examples of the health and safety issues at Valero operations include the following::

- A Valero Natural Gas explosion May 20, 1996 causing an employee to suffer burns on 70% of his body.

- A worker at the company's Texas City refinery died after apparent exposure to 130 pounds of hydrogen sulfide February 11, 1998.

- A 1998 TNRCC Agreed Order (allegation no. 4 under Section 9d in Docket No. 97-1033-AIR-E) and $50,000 fine ordered Valero to instruct HDS unit operators not to open the drain-valve on the knockout pot for the Hydrodesulfurization (HDS) Compressor Unit and put back into service the automated enclosed drain system. The action resulted from a Valero employee complaining by phone to OSHA (Region 6 Corpus Christi field office) on

March 6, 1997 (discussed in March 10, 1997 Valero letter to OSHA Region 6 office in Corpus Christi) due to the H2S emissions from this open drain-valve on the HDS unit compressor.

III. VALERO'S ACQUISITION OF EXXON-BENICIA IS PART OF AN AGGRESSIVE EXPANSION EFFORT, AND CONSTITUTES A LARGER COMMITMENT THAN ITS RECENT ACQUISITIONS.

Valero is an oil company on a buying spree. The Texas City, Houston and Krotz Springs Refineries were acquired with the acquisition of Basis Petroleum, Inc., a wholly owned subsidiary of Salomon Inc, on May 1, 1997. The stock of Basis was acquired for approximately $470 million.[5]

On September 16, 1998, Valero Refining Company-New Jersey, a wholly owned subsidiary of Valero, purchased substantially all of the assets related to Mobil Oil Corporation's 155,000 BPD refinery in Paulsboro, New Jersey and assumed certain of its liabilities. The purchase price was $228 million plus approximately $107 million representing the value of inventories and certain other items acquired in the transaction.

During the very same time that the company has been engaging in these

[5] This amount included certain costs incurred in connection with the acquisition and was net of $9.5 million received from Salomon in December 1997 representing a final resolution between the parties relating to certain contingent environmental obligations for which Salomon was responsible under the purchase agreement.

acquisitions, it has been plagued with unresolved environmental problems at its existing facilities in Texas. In short, the company seems to have been less adept at putting its own house in order than in adding to its holdings at other locales.

The company's proposed purchase of Exxon assets for more than $895 million is the largest of Valero's recent acquisitions -- more than the combined cost of both of the prior acquisitions. The acquisition would yield a 20% growth in product output.

IV. VALERO'S GROWTH EFFORTS ARE ACCOMPANIED BY AGGRESSIVE COST CUTTING.

To limit its increasing debt, the company is engaged in aggressive cost cutting. In 1999 the company announced a savings of $40 million - in part due to reduced maintenance costs. According to Valero's form 10-K report to shareholders issued March 8, 2000:

> In 1999, Valero implemented cost savings initiatives which resulted in operating expense savings of over $40 million at its Gulf Coast refineries, and expects to attain further operating cost reductions at all of its refineries in 2000. The components of Valero's cost savings program include: improving mechanical availability, reducing maintenance costs, improving energy efficiency, replicating best operating practices at all refineries, improving purchasing efficiencies through multi-refinery contracts, reducing warehouse inventory and reducing the use of outside professional services.

In its 10K report and in discussions with investors, the company has announced its

intention to look for more acquisition opportunities even beyond the Benicia refinery.[6] However with the Benicia acquisition the company's fuel output would grow 20%; its debt-to-capital ratio would grow from 42 to 50%. Bill Greehey has stated that the company plans to bring this figure back down to 42% within a year.

Continued cost cutting is clearly on the Valero agenda.[7] We know that across the refining and chemicals industry, experience suggests that cost cutting measures often mean cutting corners on environmental and safety activities, personnel and investments. Valero seems a prime candidate for such an approach.

Another source of costs that must be factored into Valero's activities is environmental spending demanded at other acquired facilities. The company's acquisition of the Krotz Springs Louisiana Refinery from Basis Petroleum in 1997 is one of those cost factors. This is one of the worst performing polluters in the refining sector, according to an analysis by the organization Environmental Defense. Significant spending may be needed there and should be assessed in any determination of Valero's readiness to assume operations at Benicia.

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[6] The 10-K report issued March 8, 2000 describes as the first point in the company's strategic plan "Growth through acquisitions. Valero has continued to focus on growth and diversification through acquisitions. In 2000, Valero will continue to seek refinery acquisition opportunities that are accretive to and diversify earnings and cash flow."

[7] The 10-K report listed cost-cutting as another key element of the company's strategic direction.

Valero has also stated that in a recent news report that it will be required to spend $125 million at its five refineries, including $25 million on its Corpus Christi refinery, which produces gasoline at 118 parts per million, to comply with low sulfur fuel requirements.[8]

V. VALERO FACES SUBSTANTIAL FINANCIAL EXPOSURE IN AN ARBITRATION OVER A CONTRACT DISPUTE ON A PIPELINE IN TEXAS.

In October 2000, Valero will be party to an arbitration to decide the amount of its liability in a complex contract case involving a formerly owned natural gas pipeline system. The company's 10-K report issued March 2000 states that any liability over $30 million would accrue to Valero rather than its predecessor company "Old Valero".[9]

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[8]Andrea Jares, Desulfurizing gas, Refiners here fear huge, unrecoverable expenses Caller-Times, Sunday, August 8, 1999.

[9] The 10-K report says that " Old Valero and certain of its natural gas related subsidiaries, and the Company, have been sued by Teco Pipeline Company in the 215th State District Court, Harris County, Texas regarding the operation of the 340-mile West Texas Pipeline in which a subsidiary of Old Valero holds a 50% undivided interest. The case was filed April 24, 1996. In 1985, a subsidiary of Old Valero sold a 50% undivided interest in the pipeline and entered into a joint venture through an ownership agreement and an operating agreement, with the purchaser of the interest. In 1988, Teco succeeded to that purchaser's 50% interest. A subsidiary of Old Valero has at all times been the operator of the pipeline. Despite the written ownership and operating agreements, the plaintiff contends that a separate, unwritten partnership agreement exists, and that the defendants have exercised improper control over this alleged partnership's affairs. The plaintiff also contends that the defendants acted in bad faith and negatively affected the economics of the joint venture in order to provide financial advantages to facilities or entities owned by the defendants, and by allegedly taking for the defendants' own benefit certain opportunities available to the joint venture. The plaintiff asserts causes of action for breach of fiduciary duty, fraud, tortious interference with business relationships, professional malpractice and other claims, and seeks unquantified actual and punitive damages. Old Valero's motion to require arbitration of the case as required in the written agreements was denied by the trial court, but Old Valero appealed,

Notably the company has failed in its report to investors (10-K report filed March 8, 2000) to quantify the possible level of liability associated with this dispute. Depending on their length and complexity a pipeline systems can be worth hundreds of millions of dollars, so the potential liability associated with this matter should give the SEC, FTC, investors and affected communities a reason to insist on more detailed disclosure from Valero. Instead of quantifying, for instance, the range of potential liability involved, the company merely states that:

> The Company believes it is unlikely that the final outcome of any of the claims or proceedings to which it is a party would have a material adverse effect on its financial statements; however, due to the inherent uncertainty of litigation, the range of possible loss, if any, cannot be estimated with a reasonable degree of precision and there can be no assurance that the resolution of any particular claim or proceeding would not have an adverse effect on the Company's results of operations or financial condition.

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and in August 1999, the court of appeals ruled in Old Valero's favor and ordered arbitration of the entire dispute. Teco has since waived efforts to further appeal this ruling, and an arbitration panel has been selected. The Company has been formally added to this proceeding. The arbitration panel has scheduled the arbitration hearing for October 2000. Although PG&E previously acquired Teco and now owns both Teco and Old Valero, PG&E's Teco acquisition agreement purports to assign the benefit or detriment of this lawsuit to the former shareholders of Teco. In connection with the Restructuring, the Company has agreed to indemnify Old Valero with respect to this lawsuit for 50% of any final judgment or settlement amount up to $30 million, and 100% of that part of any final judgment or settlement amount over $30 million."

VI. THE EXXON REFINERY IN BENICIA HAS A RECORD OF VIOLATIONS AND HIGH POLLUTION EMISSIONS.

The Exxon refinery has been considered one of the least well-controlled refineries in the country by the Environmental Defense Fund, given its size and throughput.[10]

Toxic Releases from Exxon-Benicia (pounds released in 1997) Source: EDF	
Total Emissions	1,528,303
Benzene	14,151

According to EPA's online database the Sector Facility Index, the Benicia area is in nonattainment of ambient air pollution standards for CO,NO2, and VOC. In other words, the area cannot handle more pollution, and should be securing commitments to lower pollution.

Yet the refinery is a contributor to VOC and NO2 pollution in particular. For instance the EPA's investigation into VOC valve leaks from the refinery found that the company had been dramatically underreporting releases – reporting less than half of its actual VOC releases. Exhibit 5. See Exhibit 7 for listing of the numerous complaints and notices of violation filed regarding the facility in the last few years.

[10] See Ranking Refineries. http://www.edf.org/programs/ppa/cg/or/index.html

VII. VALERO HOPES TO INCREASE THROUGHPUT IN BENICIA BEYOND WHAT THE REFINERY IS ALREADY PRODUCING, POSING POTENTIAL FOR ADDED POLLUTION.

Valero's plans announced to investors as part of a March and April 2000 "Road Show"[11] includes Strategic Capital Projects at the refinery – "opportunities" for increasing product yields. Some of the methods that they have suggested can result in increased pollution and waste byproducts. Greehey told potential investors that:

> "several upside opportunities are available to further improve reliability and product yields:
>
> - Increase reformer utilization
> - Hydrocracker yield optimization
> - Increased heavy crude processing rate
> - Increased utilization rates of conversion units

Some of these measures typically result in added pollution and waste, others could reduce it. Optimizing hydrocracker yield is a good example. In a refinery a number of procedures are used to turn heavier components of crude oil, some of which are called residues, into lighter, more useful, hydrocarbons. The general name for most of these procedures is "cracking," often called catalytic cracking because many of the processes use catalysts, or materials that help chemical reactions without being used up themselves. Refinery catalysts generally lose their effectiveness after repeated use (and are thus "spent") and must be replaced or regenerated, so used catalysts can be a source of waste. More information is needed as to whether for instance, different catalysts or more catalysts needed. On the other hand increased hydrocracker use may help with

[11] Online at http://www.valero.com/SlideShow/benicia-east/sld012.htm

sulfur removal or may increase emission of VOC's and/or HS. Similarly, increased reformer utilization generally means increased reforming catalyst recycling -- a process that produces dioxins at the site of recycling.

VIII. THE PUBLICLY DISCLOSED INFORMATION REGARDING VALERO IS INADEQUATE AND VIOLATES THE PUBLIC'S RIGHT TO REVIEW AND COMMENT.

As noted above, the FTC has stated that it will review the environmental capabilities of Valero in considering whether to authorize the divestiture. However, there has been no disclosure by the agency as to any Valero submittals relating to these capacities. The public has been denied its right to review and comment

Ordinarily, confidential business information is excluded from public view by applicants' submittal of redacted versions of documents which delete the confidential aspects of the information submittals from public view. However, in this matter the applicant has redacted both confidential and *nonconfidential* information from public view, in part by treating the entirety of its appendices as confidential. For instance, the application refers to letters sent to employees, public letters and commitments and other documentation which appears to be nonconfidential. Yet it appears that the applicant has treated the entirety of those submittals as confidential.

Given the manner in which the applicant has overreached, we have previously requested

that the FTC immediately make all of the nonredacted documents (application, and two volume appendix) available for public review, to make it possible to review and comment on a timely basis. Alternatively, we requested that the agency conduct a careful and line by line review of the documents submitted by ExxonMobil and ensure that the redaction does not overreach into nonconfidential information. We assert that denial of access to the array of nonconfidential information submitted to the agency constitutes a denial of our rights under the US Constitution, the Administrative Procedures Act and FTC laws and regulations to such documents.

We need access to the array of documents submitted to evaluate the company's environmental, community and labor records and performance, and to provide needed supplementation for FTC decisionmaking.

The following are examples of issues which we would expect the FTC and public to be able to review in the course of determining whether Valero is an appropriate applicant for the acquisition:

- Amount of assets Valero reserves for environmental liabilities. In contrast to other companies such as Unocal, in its financial reporting Valero does not include a line item reserved for environmental liabilities. So we do not know how much is set aside for environmental improvements at its facilities. Nor does it itemize the amount of potential remedial liabilities associated with cleanup of

contamination at its various properties. Its reporting on these issues is not as detailed and forthcoming as needed by shareholders and the public.

- Pipeline arbitration. The maximum amount or range of potential liability associated with the pipeline arbitration.

- Is the company committed to phasing out MTBE at the Benicia facility? By when?

- Details of the company's cost-cutting program launched in 1999. How were maintenance costs in particular reduced? Relative data on the extent of environmental expenditures and maintenance spending by the company in the last five years as compared with comparable refiners in the industry. Also, did recent cost-cutting entail layoffs? If so, how many workers were laid off?

- Copies of all grievances or complaints filed by workers or community residents relative to all Valero facilities.

- Documentation on worker safety including the total recordable incidents rate and accidents per man hour for the last ten years at all Valero facilities.

- The frequency of monitoring and threshold for replacement of leaking valves at

each of its facilities.

- A listing of all spills and releases at all Valero facilities for the last ten years, accompanied by a description of the major incidents at the facilities.

- A frank assessment of the challenges faced by the company in managing environmental releases and safety. In addition describe the company's management approach and corporate culture with regard to environmental and safety issues. Copies of all companywide environmental and safety policies.

- The system used by the company for addressing community concerns. Has the company ever entered into a Good Neighbor Agreement to address outstanding issues?

- The highest environmental capital expenditure contingency for the next five years that the company is prepared to handle.

- Any environmental audits conducted at Valero facilities.

- Documentation of pollutant emission trends for all regulated and toxic release inventory substances for all Valero facilities over the last ten years. Include production output figures for the facilities for each of the years, and include a

means of normalizing the emissions to production output levels.

- Expansion trends at Valero facilities for the last ten years, including all proceedings or applications filed with local planning officials with regard to the facilities.

- A concise summary of all lawsuits, administrative enforcement proceedings, or public controversies relating to environment, taxation, state or federal subsidies, zoning, antitrust or unfair competition, and contractual on which Valero has been involved in the last ten years, and the outcome or current status of each matter.

- All criminal or civil complaints filed against Valero officials or employees in the last ten years, and the outcome and current status of each matter.

- Resource costs and expected ability of Valero to fully desulfurize fuel from all Valero refineries.

IX. THE SALE OF THE BENICIA REFINERY TO VALERO ENTAILS ENVIRONMENTAL IMPACTS REQUIRING AN ENVIRONMENTAL IMPACT STATEMENT.

As detailed in these comments, the divestiture of the refinery to Valero could entail enormous environmental impacts. The divestment of Exxon's Benicia facility, which is by many key criteria measured by EPA at the bottom of its field environmentally, raises the question of whether the FTC decision will condemn the community to continued or worsening environmental and safety hazards. The environmental impacts of the divestiture on the community could be severe and detrimental.

A. Community residents are concerned about the need to protect environment and public health.

The Good Neighbor Steering Committee, an association of residents of Benicia have crafted a proposed plan for fair and open handling of the refinery sale. In other communities, federal and state approval processes have aided local communities in negotiating conditions to address environmental and economic concerns. These pacts between corporations and local stakeholders have often been termed Good Neighbor Agreements. The local residents of Benicia have suggested that any purchaser of the Benicia refinery should enter an agreement to address the following issues:

1. Permanent protection of the "buffer zone" from expansion by refinery operations
2. Air Monitoring Program, refinery funded, but managed independently

3. Health and Safety Audit and Pollution Reduction Program to bring refinery within nation's top 20% in pollution prevention

4. Reduced Air and Water Emissions

5. Refinery-funded Community Right to Know Program

6. Post-closure Cleanup Plan and financial assurances

7. Rigorous Toxic Waste Reduction and Hazardous Materials Reuse Program

8. Refinery-funded implementation of Emergency Response Plan and Public Education Program

9. Removal of defunct pipeline running through East Side

10. Independently controlled community donation fund

11. Maintenance of city revenue levels received from refinery

12. Preservation of salaries, benefits and pensions of current workers

13. Continued commitment to retain and hire the highest-rated engineers and technicians

B. The Federal Trade Commission has the authority and obligation to require an environmental impact statement or its equivalent prior to approving the merger.

FTC regulations authorize the agency to require an environmental impact statement when a settlement may have a significant effect on the environment. If ever there was a case that merited such a review, this one clearly qualifies. The impacts on the environment of the Valero acquisition appear to be detrimental. The FTC needs to

assume that Valero will manage the refinery consistent with its record at Corpus Christi. Statistics compiled in these comments suggest that this would mean a substantial increase in accidental emissions, water violations and other problems.

The National Environmental Policy Act requires that an Environmental Impact Statement be prepared prior to federal decisions on proposals for "major actions, significantly affecting the quality of the human environment." Merely examining the environmental record of the acquirers of divested property will not address the severe environmental consequences posed Valero assuming ownership of the Benicia property.

Ironically, it was prior litigation in *Mobil v. FTC* that clarified that an Environmental Impact Statement or its equivalent must be prepared before a final FTC decision, including final approval of a consent decree, that may significantly affect the environment. [12]

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[12] The case, in which Exxon was the lead party, concluded that FTC enforcement proceedings are federal actions subject to section 102(2)(C) of NEPA "when their scope and impact on the environment are significant." The case related to a pending FTC decision to force several oil companies including Exxon, Mobil and others, to restructure as part of an acquisition process:
(1) The divestiture of 40 to 60 percent of respondents' refinery capacity in the relevant market and the establishment of 10 to 13 new firms;
(2) The divestiture of all crude and produce pipelines which connect directly to the new firms and are owned and operated by the refining department of the parent; and
(3) The transfer to the new firms of fractional ownership shares in connecting joint venture pipelines.

Mobil and others asserted that an environmental impact statement was necessary prior to the decision. They alleged that the proposed divestiture of a substantial percentage of their refineries and pipelines would have a polluting effect on the environment. It was claimed, for

The divestiture is an exemplary instance of a government decision with massive environmental impacts, on which a thorough environmental review is needed. This decision would involve an 'irretrievable commitment of resources' which NEPA insists must follow rather than precede consideration of environmental factors.

In addition, FTC rules of practice section 1.82 point to the need for an EIS in this matter:

> In the event that the Commission in an administrative enforcement proceeding actively contemplates the adoption of standards or a form of relief which it determines may have a significant effect on the environment, the Commission will, when consistent with the requirements of law, provide for the preparation of an environmental assessment or an environmental impact statement or such other action as will permit the Commission to assess alternatives with a view toward avoiding or minimizing any adverse effect upon the environment.

In order for such an assessment to comply with NEPA, the environmental assessment must be conducted in an open manner -- with disclosure of a draft assessment of environmental impacts with full public opportunity to review and comment, prior to the divestment's approval. Issues that must be examined in the environmental impact

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example, that various aspects of a refinery's operations, including-"the sulfur content of the crude oil refined, the percentage of capacity at which it is operated and the means of transportation used for crude oil and refined product"-directly affect the environment. A relationship thus established between the environment and a particular refinery, it would follow that any change in operations inevitably would have an environmental impact. The court agreed that compliance with NEPA is needed prior to completion of such a decision. *Mobil Oil Corp., et al v. Federal Trade Commission*, 430 F. Supp. 855 (S.D.N.Y.) 1977.On appeal, the circuit court decided that an EIS is not required in the early stages of adjudication when the remedy is speculative, but implied that one could be required prior to final approval of a consent decree involving significant environmental impacts. 562 F.2d 170 (2d Cir.).

statement include but are not limited to:

- The impact on the environment if the larger Exxon Benicia refinery were operated by Valero in the same manner and with the same performance outcomes in spills and violations as its similarly complex refinery, the Corpus Christi unit.

- Whether Valero's stated plans, to upgrade the refinery consistent with CEO Bill Greehey's "Road Show," would impose significant additional environmental pollution on an already overstressed environment.

- Whether Valero intends to and has the capital needed to make any upgrades needed at the refinery to bring it into full compliance with the law, and on what timeline those actions will be taken.

- Whether Valero intends to seek permission to produce or utilize MTBE at the refinery, given statements of CEO Bill Greehey that the company continues to be opposed to the phaseout of MTBE.[13]

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[13] MTBE - methyl tertiary butyl ether - is a gasoline additive used widely in California. It has contaminated as many as 14,000 sites in the state, and Gov. Gray Davis has ordered it phased out of use by the end of 2002. Another part of his order, made March 1999, was that the state work with oil companies to provide MTBE-free fuel to the Tahoe area sooner. Most of the state's gasoline still contains MTBE, a suspected human carcinogen that makes water undrinkable at even low levels of contamination. Valero CEO Bill Greehey has been a staunch defender of

- The environmental and safety implication of any job cuts at the Benicia refinery. The recent history of the oil and chemical industries demonstrates that shortages of staff in maintenance-related positions, often leads to safety and environmental problems.

X. RECOMMENDATIONS AND REQUESTS

Based on Valero's poor environmental record, and its financial and managerial shortcomings as detailed in the above comments, we request that the FTC take the following actions:

1) Deny the application to sell the Benicia refinery to Valero due to the company's poor record in maintaining a similarly complex refinery in Corpus Christi and the company's financial status.

2) The FTC should disclose all nonconfidential information submitted in the divestiture application.

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out of use by the end of 2002. Another part of his order, made March 1999, was that the state work with oil companies to provide MTBE-free fuel to the Tahoe area sooner. Most of the state's gasoline still contains MTBE, a suspected human carcinogen that makes water undrinkable at even low levels of contamination. Valero CEO Bill Greehey has been a staunch defender of MTBE, despite the contamination issues. While he has acknowledged that he is aware of the California phase-out, he has stated that he continues to defend the use and production of MTBE at other Valero facilities. However, a company spokesperson has also stated that the company's engineers have estimated that its MTBE plant near Corpus Christi could be converted to other uses for between $ 5 million and $ 10 million.

3) Require Valero to disclose the information described in section VIII of these comments.

4) Defer any approval of the acquisition until after resolution of the Teco pipeline dispute.

5) Extend the time for comment on the acquisition. Because of our inability to evaluate and comment effectively while nonconfidential information is being withheld by the applicant and proponents, establish a further 30 day comment period to run from the date on which the above-described documents are disclosed.

6) Require an environmental impact statement prior to any approval of the sale to Valero.

7) In the event that any sale to Valero is ultimately approved, impose binding conditions sufficient to ensure that Valero will reduce, rather than increase, the pollution from the Benicia refinery.

Respectfully Submitted,
Benicia Good Neighbor Steering Committee

by
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PO Box 79225
Waverly, MA 02479
617 489-3686

EXHIBITS TO COMMENTS
OF
GOOD NEIGHBOR STEERING COMMITTEE
BENICIA, CALIFORNIA

Valero Acquisition of Exxon California Assets
FTC File No. 991-0077; Docket No. C-3907

[EXHIBITS 1-7 SUBMITTED UNDER SEPARATE COVER]
VALERO INC. DOES NOT APPEAR UP TO
THE CHALLENGE OF REDUCING POLLUTION
AT THE BENICIA REFINERY

1. Valero's Corpus Christi, Texas refinery is targeted in November 1999 by USEPA as one of one of the five worst operations in Texas for accidental releases of Hazardous Materials. News report.

2. Valero's Corpus Christi Texas refinery is reported in Current Significant Noncompliance for air and water pollution in EPA's Sector Facility Indexing database updated to July 1999. Sector Facility Index Data including Emission Reporting Notification System (ERNS) data showing a large number of hazardous materials releases. Compare with Exhibit 6 for Exxon, Benicia.

3. Valero's refineries are cited by Environmental Working Group as among the worst Clean Air lawbreakers in Texas. Excerpt from Environmental Working Group, Above the Law, Texas, May 1999.

CURTAILING POLLUTION
FROM THE EXXON BENICIA FACILITY
IS A MAJOR CHALLENGE

4. Exxon's Benicia Refinery is cited as one of the worst clean air violators in California by the national Environmental Working Group. Environmental Working Group, Above the Law in California, May 1999.

5. EPA investigators indicate double the pollutant leakage rate from Benicia refinery valves than Exxon has reported. Minority Staff, Special Investigations Division, US House of Representatives , Oil Refineries Fail to Report Millions of Pounds of Harmful Emissions, November 10, 1999.

6. EPA's Sector Facility Indexing Report for Exxon and ERNS data show fewer accidental releases than Valero Corpus Christi but current significant noncompliance for air pollution.

7. Exxon Benicia refinery notices of violation of air pollution laws from Bay Area Air Quality Management District, sorted by date.

ADDITIONAL EXHIBITS SUBMITTED WITH COMMENTS

8. Statement of Neil Carman, Ph.D.

Exhibits 1-7 Submitted under Separate Cover

8. Statement of Neil Carman, Ph.D.

AFFIDAVIT OF NEIL CARMAN

STATE OF TEXAS)
) ss.:
COUNTY OF TRAVIS)

NEIL J. CARMAN, Ph.D., being duly sworn, deposes and says:

1. I am the Director of the Clean Air Program for the Lone Star Chapter of the Sierra Club. I have held this position for 8 years, since April 1992. In addition, I have served for the past 6 years as a technical advisor to the Galveston-Houston Association for Smog Prevention (GHASP) concerning air quality issues in the Houston-Galveston eight-county severe ozone nonattainment area which surpassed the LA basin in 1999 as having the worst ozone smog in the nation, and also perform pro bono consulting work with community organizations in states including Louisiana, California, Arkansas, Florida, Michigan, New York, Idaho, North Carolina, Georgia, and others. From 1980 to 1992 I worked for the Texas Air Pollution Control Board as a regional investigator conducting annual major source-industrial plant compliance inspections (including but not limited to chemical plants, petroleum refineries, natural gas processing plants, natural gas liquids plants, cement kilns, power plants, iron foundry's, fertilizer plants, carbon black plants, pipe coating facilities, medical waste incinerators, industrial waste incinerators, asphalt plants, concrete batch mix plants, and others), permit investigations, stack sampling (observer and supervisor of regional stack sampling team), property line sampling, citizen complaint investigations, enforcement cases including lawsuits (expert testimony in state district court), and laboratory analytical work. I have a PhD in botany emphasizing natural plant products chemistry from the University of Texas at Austin and an BS and MS in botany from the University of Iowa.

2. My background on enforcement and air permitting matters in Texas extends back to 1980 and I have been involved since then, first as a state regulator in Texas participating in many enforcement and permit technical reviews and site investigations of different kinds of major and minor sources as previously indicated. Annual major and minor source compliance inspections were routinely carried out at more than 200 sites per year on average, and many of these sites were permitted either under state and/or federal requirements such as NSR, PSD, and NSPS having to comply with NSPS, NESHAPs, etc. Some were grandfathered from needing permits, but still needed to comply with minimum limits for criteria pollutants under state air quality regulations. I have worked on several dozen major enforcement cases in Texas. Enforcement cases, including several litigation cases handled by the Texas Attorney General's Office Environmental Protection Division, involved many permitted facilities and the agreed enforcement orders required extensive technical reviews of applicable permit requirements to address gaps that were not previously considered or adequately addressed by permit special conditions. Companies under existing permits where the neighboring citizens complained about air pollution problems in a number of cases voluntarily agreed to amended permit special conditions in order to address the community's concerns, and in other cases, permits were amended through enforcement actions if companies were not interested in

in the attached list are violations of the following:

(1) Texas State Implementation Plan (SIP) under section 110 of the Act, 42 U.S.C. § 7410;

(2) the New Source Performance Standards (NSPS) provisions of the Act, 42 U.S.C. § 7411, et seq.;

(3) U.S. EPA regulations governing emissions of SO2 and H2S from petroleum refineries, 40 C.F.R. §§ 60.104(a)(2)(i) and 60.104(a)(1) respectively;

(4) Hydrocracker, Naphtha Hydrotreater and Naphtha Catalytic Reforming Units: Special Conditions No. 1 (Emission Sources - Maximum Allowable Emission Rates) and No. 8 (hydrogen sulfide concentration limit) of Air Quality Permit No. 19819/PSD-TX-324M7, issued by the Texas Natural Resource Conservation Commission (TNRCC) on January 18, 1996;

(5) Heavy Oil Cracker, Hydrodesulfurization (HDS), and HDS Desalter Units: Special Conditions No. 1 (Emission Sources - Maximum Allowable Emission Rates) and No. 15 (hydrogen sulfide concentration limit) of Air Quality Permit No. 8373/PSD-TX-324M7, issued by the TNRCC on January 18, 1996;

(6) Heavy Oil Cracker, HDS, and HDS Desalter Units: Special Condition No. 24 (nuisance prohibition) of Air Quality Permit No. 8373/PSD-TX-324M7, issued by the TNRCC on January 18, 1996;

(7) Heavy Oil Cracker, HDS, and HDS Desalter Units: Special Condition No. 35 (sulfur dioxide concentration limit) of Air Quality Permit No. 8373/PSD-TX-324M7, issued by the TNRCC on January 18, 1996;

(8) Heavy Oil Cracker, HDS, and HDS Desalter Units: Special Condition No. 37 (sulfur dioxide concentration limit) of Air Quality Permit No. 8373/PSD-TX-324M7, issued by the TNRCC on January 18, 1996;

(9) Heavy Oil Cracker, HDS, and HDS Desalter Units: General Conditions Nos. 1, 8, 9, 10, and 14 of Air Quality Permit No. 8373/PSD-TX-324M7, issued by the TNRCC on January 18, 1996;

(10) Hydrocracker, Naphtha Hydrotreater and Naphtha Catalytic Reforming Units: General Conditions Nos. 1, 8, 9, 10, and 14 of Air Quality Permit No. 19819/PSD-TX-324M7, issued by the TNRCC on January 18, 1996;

(11) Hydrocracker, Naphtha Hydrotreater, Naphtha Catalytic Reforming, Heavy Oil Cracker, HDS, and HDS Desalter Units: 30 TAC [illegible];

(13) Hydrocracker, Naphtha Hydrotreater, Naphtha Catalytic Reforming, Heavy Oil Cracker, HDS, and HDS Desalter Units: 30 TAC 116.115 (b)(8);

(14) Hydrocracker, Naphtha Hydrotreater, Naphtha Catalytic Reforming, Heavy Oil Cracker, HDS, and HDS Desalter Units: 30 TAC 116.115 (b)(9); and

(15) Hydrocracker, Naphtha Hydrotreater, Naphtha Catalytic Reforming, Heavy Oil Cracker, HDS, and HDS Desalter Units: 30 TAC 101.4.

8. Summary of some of the excess SO2 and H2S problems. Valero reported to the TNRCC more than 8.6 million pounds of excess SO2 emissions during hundreds of upset conditions at the refinery in the period between January 1994 and August 1998. Example of SO2 and H2S permit exceedance in 1994. September 14, 1994 upset and citizen complaints of air pollution from the refinery - Valero reported an excess emission release of 900 pounds of SO2 for 1.0 hours duration (time: 1358 - 1458), and the 900 pounds per hour SO2 exceeded the plant's permitted maximum allowable rate of 482 pounds per hour. H2S excess emissions were reported for the same event. Upset resulted from various units (HOC suffered an instrument malfunction and associated units (HOC-TAME, HF-Alkylation, HOC-Amine) going offline. During the upset and subsequent shutdowns,SO2, refinery fuel gas H2S and heater oxygen (Alkylation) excursions occurred at the SRU's caustic scurbber stack. During Sepember 12-16, 1994 during receipt of at least three citizen air pollution complaints to the TNRCC Regional office in Corpus Christi for "terrible smell", "smell of gun powder," and "burning, odor of

musty sour gas," Valero also reported simultaneous upset event with SO2 excess emissions of 293,200 pounds for 98 total hours, and the 2,990 pounds an hour SO2 exceeded the plant's permitted maximum allowable rate for SO2 pounds an hour. H2S excess emissions were reported for the same event. Upset emissions stemmed from plant units experiencing problems partly attributable to a lack of adequate maintenance and proper refinery operation, and so the plant went into an early turnaround for maintenance.

9. Example of SO2 and H2S permit exceedance in 1995. September 12-15, 1995 upsets - Valero reported six SO2 excess emission releases totaling 849,830 pounds of SO2 over 129.5 hours combined duration, and the 6,562 pounds per hour (peak of 10,140 pounds per hour for 83.5 hours) SO2 exceeded the plant's permitted maximum allowable rate of 482 pounds per hour. During approximately the same period of Sepember 11-16, 1995 during receipt of at least ten citizen air pollution complaints to the TNRCC Regional office in Corpus Christi for air pollution from Valero's refinery. Upset emissions occurred from plant process units experiencing problems which are partly attributable to a lack of adequate maintenance and proper refinery operation.

10. Example of SO2 and H2S permit exceedance in 1996. May 11-14, 1996 upsets - Valero reported four SO2 excess emission releases totaling 635,040 pounds of SO2 over 32.4 hours combined duration, and the 19,600 pounds per hour SO2 upset exceeded the plant's permitted maximum allowable rate of 336 pounds per hour. During approximately the same period of Sepember 11-16, 1995 during receipt of a least three citizen air pollution complaints to the TNRCC Regional office in Corpus Christi for air pollution from Valero's refinery. Upset emissions stemmed from plant process units experiencing problems which are partly attributable to a lack of adequate maintenance and proper refinery operation.

11. Example of SO2 and H2S permit exceedance in 1997. September 22, 1997 upsets - Valero reported five SO2 excess emission releases totaling 32,200 pounds of SO2 over 7.0 hours combined duration, and the peak rate of 11,068 pounds per hour SO2 upset exceeded the plant's permitted maximum allowable rate of 342 pounds per hour. During approximately the same period of Sepember 11-16, 1995 during receipt of a least one or more citizen air pollution complaints to the TNRCC Regional office in Corpus Christi for air pollution from Valero's refinery. Upset emissions stemmed from plant process units experiencing problems which is partly attributable to a lack of adequate maintenance and proper refinery operation.

12. Example of SO2 and H2S permit exceedance in 1998. August 8, 1998 upset - Valero reported an excess emission release of 89,296 pounds of SO2 for 3.2 hours duration (time: 1600 - 1912), and the 27,905 pounds per hour SO2 exceeded the plant's permitted maximum allowable rate of 342 pounds per hour. H2S excess emissions were reported at 975 pounds for the same event or more than 300 pounds an hour. Upset resulted from various plant process units experiencing problems which is partly attributable to a lack of adequate maintenance and proper refinery operation.

13. Summary of Valero's excess emissions from 1994-98. Excess SO2 emitted from 1994-98 was 4,312.1 tons and 97.9% of major plant releases or 8,624,000 pounds was excess Sulfur Dioxide. Excess VOCs emitted from 1994-98 was 84 tons and 1.9% of major plant releases or 168,000 pounds were excess VOCs. Excess H2S emitted from 1994-98 was 9.8 tons and 0.2% of major plant releases or 19,600 pounds of was excess H2S. Valero's total excess emissions of SO2, H2S and VOCs was 8,811,800 pounds of unpermitted pollution.

DATE	SO2 #/hr
8-08-98	27,905
4-05-96	20,120
4-06-96	20,120
5-11-96	19,600
5-12-96	19,600
5-13-96	19,600
5-14-96	19,600

8-15-94	16,020
6-18-98	13,429
11-14-96	11,500
10-03-95	11,340
9-22-97	11,068
10-14-96	10,940
8-14-95	10,880
4-04-94	10,880
5-13-94	10,580
10-29-95	10,560
10-22-95	10,560
10-27-95	10,560
5-13-95	10,400
5-14-95	10,400
9-12-95	10,140
9-13-95	10,140
9-15-95	10,140
9-16-95	10,140
6-05-97	10,088
9-20-96	10,080

Month/YEAR	Excess SO2 Tons
1-98	495,841
7-97	363,331
5-96	635,040
4-96	571,041
10-95	338,280
9-95	849,831
8-95	535,620
7-95	1,586,569
5-95	414,307

14. Valero Refining's Corpus Christi refinery has long history of pollution problems and has kept the community complaining for years-- a brief sample of Valero's extremely poor environmental record follows. Valero is one of the most cited refineries at Corpus Christi, Tx for state air pollution violations. Local residents have repeatedly complained about air pollution problems from Valero for years despite the violations and some corrective actions being taken to solve their problems. Valero officials have repeatedly made promise after promise to fix the refinery's pollution problems but the fact is that citizens have continued to experience the same air pollution problems year after year after year. Valero's actions speak louder than its promises to the community and therefore local residents say that Valero can not be trusted to protect public health and obey the laws when their profits are more important.

15. Among Valero's problems is Sulfur Dioxide (SO2) pollution above permit limits due to repeated and continuing upsets in its process units. From 1994-98, Valero self-reported that it emitted 8.6 million pounds of excess SO2 which ranked it at the top and among the dirtiest Texas refineries for SO2 from upsets. As a result, EPA Region 6 Dallas office ranked Valero's Corpus refinery among the dirtiest 11 major plants in its Region of Texas, Louisiana, Arkansas, Oklahoma and New Mexico for accidental air pollution releases. What is not too surprising is that citizens have persistenly complained about Valero's SO2 pollution without much real progress to stop the upsets.

16. Valero has had many pollution problems from Hydrogen Sulfide and was cited for violations of the Texas 30-minute standard of 80 parts per billion. Valero was charged with exceeding the SO2 standard also. Citizens complained of Valero's catalyst fines, a fine dust

coating homes, properties and are respirable, hazardous PM10. The state (and Valero officials) promised to remedy Valero's PM10 and catalyst dust pollution problem when Valero installed a heavy oil cracker scrubber October 1994. Citizens complained for 10 years of catalyst dust levels adversely impacting their health, welfare and property, but state officials failed to properly investigate catalyst dust complaints, failed to issue any violations, failed to take enforcement action, failed to seek corrective remedies from Valero, failed to obtain administrative or civil penalties from Valero, and failed to obtain continuous compliance from Valero for over ten years. Citizens became so frustrated that many refrain from making further complaints to the state because they know from past experience it is a waste of time to make complaints. Citizens allege the state calls Valero first before responding to a complaint. Citizens were informed that a new Valero scrubber would remedy the catalyst dust problem from Valero by a new permit September 3, 1993; but the permit itself states on Permit Amendment Application No. 8373 and PSD-TX-324M-6; HOC for the heavy oil cracker flue gas scrubber replacement, ..."Please note that Valero is not requesting any emissions increases with this application. The permitted emissions rate of SO2 will decrease by 1,109 tons/year, and the emissions limits for all other pollutants will remain the same." The state promised residents that this permit would resolve the long-term catalyst dust with a new heavy oil cracker scrubber, but citizens were deceived by Valero officials.

17. An Occupational Safety and Health Administration (OSHA) complaint on H2S by a Valero Refining employee. A 1998 TNRCC Agreed Order (allegation no. 4 under Section 9d in Docket No. 97-1033-AIR-E) and $50,000 fine ordered Valero to instruct HDS unit operators not to open the drain-valve on the knockout pot for the Hydrodesulfurization (HDS) Compressor Unit and put back into service the automated enclosed drain system. The action resulted from a Valero employee complaining by phone to OSHA (Region 6 Corpus Christi field office) on March 6, 1997 (discussed in March 10, 1997 Valero letter to OSHA Region 6 office in Corpus Christi) due to the H2S emissions from this open drain-valve on the HDS unit compressor.

I, Neil Carman, Ph.D., hereby declare under penalty of perjury, that the foregoing is true and correct.

Executed on 4/7/2000.

(signature)

Neil Carman, Ph.D.